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Supreme Court, U.S.
FILED
APR 13 1904
JAMES H. MCKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

EX PARTE THE UNITED STATES, PETITIONER.
NO. 16, ORIGINAL.

PETITION FOR A WRIT OF MANDAMUS.

BRIEF FOR PETITIONER.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

EX PARTE: THE UNITED STATES, PETITIONER.
NO. 16, ORIGINAL.

PETITION FOR A WRIT OF MANDAMUS.

BRIEF FOR PETITIONER.

I.

MANDAMUS THE PROPER REMEDY.

Judge Wing erroneously treated the appeals from the United States commissioner in the Chinese cases referred to as before him merely as *judge*. The purpose of this application is to compel him to take jurisdiction of such appeals as *district court*, enter final judgments therein, and file and record the papers and proceedings, in order that the Government may avail itself of its statutory right to a review thereof by this court.

In *Insurance Company* v. *Comstock* (16 Wall., 258) it was held that mandamus was the proper remedy to compel a circuit court, which had erroneously dismissed

a case appealed from a district court for want of jurisdiction, to take jurisdiction thereof and proceed to final judgment. The court there said (p. 270):

> Repeated decisions of this court have established the rule that this court has power to issue a mandamus, in the exercise of its appellate jurisdiction, and that the writ will lie in a proper case to direct a subordinate Federal court to decide a pending cause. (*Marbury* v. *Madison*, 1 Cranch., 175; *Kendall* v. *United States*, 12 Peters, 622.) Power to issue the writ of mandamus to the circuit courts is exercised by this court to compel the circuit court to proceed to a final judgment or decree in a cause, *in order that this court may exercise the jurisdiction of review given by law;* and in the case of *Ex parte Bradstreet* (7 Peters, 647) this court decided, Marshall, C. J., giving the opinion of the court, that every party has a right to the judgment of this court in a suit brought by him in one of the inferior courts of the United States, provided the matter in dispute exceeds the sum or value of $2,000, and that the court in such case will issue the writ to a circuit court or a district court exercising circuit court powers, in a case where the subordinate court had improperly dismissed the case, requiring the court to reinstate the case and to proceed to try and adjudge the issues between the parties.

In the case of *Ex parte Bradstreet*, referred to in the above quotation, the rule to show cause had been granted at a previous term. (6 Pet., 774.) The re-

porter having inquired of Mr. Justice Baldwin whether he dissented from the order of the court, the latter replied (6 Pet., 774, note):

> I dissented from the order of the court in the following respects: 1. In ordering the suits to be reinstated. 2. Requiring the court to permit amendments to be made.
>
> The ground of my dissent was that a mandamus was not a proper remedy; that the dismissal of a suit for want of jurisdiction was a final judgment, on which a writ of error could be brought, but that the Supreme Court had no power to issue a mandamus in such a case, the judgment being strictly a judicial act, and that though an appellate court could direct amendments, it could only do so when a case was before them by writ of error or appeal.
>
> It was stated in the affidavit that the court had actually rendered a judgment of dismissal for the want of jurisdiction, *but that there was no entry of it on the record, and that the judge had neglected or refused an application to direct it to be done.* I had no doubt that this was a proper case for a rule to show cause why a mandamus should not issue, directing the entry of such judgment as had been rendered by the court, so as to give the plaintiff the benefit of a writ of error.

In *Railroad Company* v. *Wiswall* (23 Wall., 507), where a circuit court of the United States had remanded, for want of jurisdiction, a case removed into it from a State court, it was held that the proper remedy was not by writ of error to review what had been

done, but by mandamus "to compel action"—that is, to make the circuit court take jurisdiction.

Recent cases to the effect that mandamus is the proper remedy to compel a court which is under the appellate jurisdiction of this court to take jurisdiction of a case, where it has erroneously declined to do so, and render final judgment therein, are—

In re Grossmayer (177 U. S., 48).
In re Connaway (178 U. S., 421).

It is true, as stated in the return of Judge Wing, that he did allow an appeal, or rather what was designated as a writ of error, to this court. But the writ so allowed goes to his action as *judge* only, and is regarded by the Government as of no consequence, since there is no right of review by this court of the action of a judge at chambers in such cases. The application for the allowance of that writ, it may be stated, was made by the United States attorney without the advice or direction of the Department.

It was thought unnecessary to set out these papers in the petition. But since the fact of the allowance of an appeal is mentioned in the return of the judge, they are appended hereto in order that the court may see just what was done.

If any value is to be given to the so-called writ of error allowed by Judge Wing, it must be upon the theory that the writ goes to his action as district court, notwithstanding his omission from the writ of the usual phrase indicating that the plea to be reviewed was before him in said court. In that event, however,

mandamus would still be necessary to compel him to enter final judgment on the records of the court, and file and record the papers and proceedings, in order that a record may exist for certification by the clerk to this court. The bill of exceptions which he signed of the proceedings before him as judge would not be sufficient, since it has not been filed, nor will he permit it to be filed, as a part of the records of the court.

II.

AS TO THE CONSTRUCTION OF THE STATUTE.

The act of September 13, 1888 (25 Stat., 476), provides:

> SEC. 13. That any Chinese person or person of Chinese descent found unlawfully in the United States or its Territories may be arrested upon a warrant issued upon a complaint, under oath, filed by any party on behalf of the United States, by any justice, judge, or commissioner of any United States court, returnable before any justice, judge, or commissioner of a United States court, or before any United States court, and when convicted upon a hearing and found and adjudged to be one not lawfully entitled to be or remain in the United States, such person shall be removed from the United States to the country whence he came.
>
> *But any such Chinese person convicted before a commissioner of a United States court may, within ten days from such conviction, appeal to the judge of the district court for the district.*

Ever since the passage of this act, until quite recently, it has been understood that the appeal from

the decision of a United States commissioner provided by the act of 1888 was to the district court and not merely to the judge. The question was so decided as early as 1892 by the circuit court of appeals for the ninth circuit. (*United States* v. *Gee Lee*, 50 Fed., 271.) The court there said:

> Section 13 of the act of 1888 contains this clause: "But any such Chinese person, convicted before a commissioner of a United States court, may, within ten days from such conviction, appeal to the judge of the district court for the district."
>
> No express provision is made for an appeal from the judgment of the district judge in such a case.
>
> Section 6 of the act of 1891, creating this court, provides that it "shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the district court * * * in all cases other than those provided for in the preceding section" of the act.
>
> If, under the circumstances, the words "the judge of the district court for the district" can be held equivalent to the words "the district court for the district," a writ of error will lie from this court to review the judgment.
>
> We are of opinion that the statute should be so read. The learned judge of the district court, from the allowance by him of the writ of error, evidently so thought. *Every argument of convenience and utility favors this conclusion. Uniformity of decision in a very important matter will thus be secured.*

> "Judge of the district court" and "district court" are not, strictly speaking, convertible terms. But they are so in a popular sense, and it is safe to assume that Congress, in the use of the former phrase in this connection, intended to give the party an appeal to the district court of the District.

It was not until 1901 that the other view was judicially expressed. (See opinion of the court of appeals for the first circuit in *Chow Loy* v. *United States*, 112 Fed., 354.)

This court has entertained, without question, appeals from district courts of the United States in Chinese cases appealed to those courts from United States commissioners, which, of course, could only have been upon the theory that the statute provided for appeals to the district court.

In *United States* v. *Mrs. Gue Lim* (176 U. S., 459) this court entertained jurisdiction of several distinct appeals from the district court for the district of Washington. In the case of Mrs. Gue Lim the warrant had been issued and her discharge ordered by the district court. In the other cases the proceedings were had before a United States commissioner, and from his judgment of deportation an appeal was taken to the district court, which reversed his decision. The judgments of the district court were all affirmed by this court.

In *Chin Bak Kan* v. *United States*, Mr. Chief Justice Fuller, speaking for the court, said (186 U. S., 199–201):

> Something is said in respect of want of jurisdiction in the commissioner because section 6

of the act of 1892 provides that Chinese laborers without certificates may be "taken before a United States judge;" but we concur in the views of the circuit court of appeals for the ninth circuit in *Fong Mey Yuk* v. *United States* (113 Fed. Rep., 898), that the act is satisfied by proceeding before "a justice, judge, or commissioner." These are the words used in section 12 of the act of 1882, section 12 of the act of 1884, *section 13 of the act of 1888*, and section 3 of the act of 1892, while the first section of the act of March 3, 1901, explicitly authorizes the district attorney to designate the commissioner before whom the Chinese person may be brought. The words "United States judge," "judge," and "court," in section 6, seem to us to refer to the tribunal authorized to deal with the subject, whether composed of a justice, a judge, or a commissioner. A United States commissioner is a *quasi* judicial officer, and in these hearings he acts judicially. *Moreover, this case was taken by appeal from the commissioner to the judge of the district court*, and his decision was affirmed, *so that there was an adjudication by a United States judge* in the constitutional sense as well as by the commissioner acting as a judge in the sense of the statute.

* * * * *

Section 13 of the act of September 13, 1888, provides that any Chinese person, or person of Chinese descent, found unlawfully in the United States, may be arrested on a warrant issued upon a complaint under oath "by any justice, judge, or commissioner of any United States court," and when convicted, on a hearing, and

> found and adjudged to be one not lawfully entitled to be or remain in the United States, shall be removed to the country whence he came. "But any such Chinese person convicted before a commissioner of the United States court may, within ten days from such conviction, appeal to the judge of the district court for the district."

In this case, it will be observed, the attention of the court was directly fixed upon the provision in section 13 of the act of 1888 authorizing an appeal from a commissioner to the "judge of the district court." As the court must have had in mind the fact that that was an appeal from the district court, the only reasonable deduction to be made from the language italicized is that the court understood the appeal given by the statute was to the district court.

The recent cases of *Ah How et al.* v. *United States*, Nos. 307, 308, 309, and 312, and *Tom Hong et al.* v. *United States*, Nos. 310, 311, and 313, decided March 21 and February 23, 1904, respectively, were also appeals from a *district court*, to which the cases had been brought upon appeal from a United States commissioner. In those cases the jurisdiction of this court was directly questioned by the Government, it being argued that but one appeal was intended to be given by the statute; and the attention of the court was called to the conflicting decisions of the circuit courts of appeals for the ninth and first circuits in *United States* v. *Gee Lee* (50 Fed., 271) and *Chow Loy* v. *United States* (112 Fed., 354) upon the question whether the

appeal was to the district judge or the district court. This court, however, took jurisdiction and affirmed the judgments of the district court in the first group of cases, but *reversed the judgments* of the district court *and discharged the appellants* in the second group. (See "Motions on behalf of the United States to vacate orders admitting to bail; and to dismiss or affirm the appeals," pp. 23–26.)

It must be assumed, therefore, that the question under discussion has been passed upon by this court. The question of jurisdiction, as the court has said, whether directly raised or not, is always before it; and upon a question of jurisdiction the first inquiry, as the court has also said, is the jurisdiction of the lower court. In the cases just referred to, where it was distinctly raised, the lower court would not have had jurisdiction if the appeal from the commissioner was to the judge individually and not to him as district court.

We have just been advised that on April 4, 1904, the circuit court of appeals for the ninth circuit overruled motions to dismiss made by the Government in certain Chinese cases (*Tsoi Yii and others* v. *United States*) appealed thereto from the district court for the northern district of California, the cases having come to the district court on appeal from judgments of deportation rendered by a United States commissioner. The ground of those motions was that the appeal from the commissioner, under the statute, was to the judge and not to the district court, and therefore no appeal

lay from his decision. The circuit court of appeals, after showing wherein the reasoning of the circuit court of appeals for the first circuit in *Chow Loy* v. *United States* (112 Fed., 354) was defective, held that the action of this court in taking jurisdiction of the appeals from the district courts in the cases above cited determined the fact that the appeal from the commissioner was to the district court, and was therefore conclusive of their right to entertain the appeals before them. As the case is not yet reported, a copy of their opinion is hereto appended.

No argument of hardship or inconvenience can be made against this construction of the act of 1888. The Chinese persons concerned certainly can not object, since it affords them opportunity, not only of a rehearing, if the decision of the district court is adverse, but if in their favor, to obtain a judicial record, for their future protection, of the fact that they are lawfully entitled to remain in the United States. The necessity on their part for such a record is apparent. In this respect the situation differs from that of a proceeding for habeas corpus before a judge, since his denial of the writ does not bar further proceedings of the same nature.

The interest of the Government in the maintenance of the existing practice is also manifest. To the numerous adjudications of this court that the method of Chinese exclusion which Congress has seen fit to adopt for the protection of the people of the United States is constitutional, Judge Wing has seen fit to oppose

his individual judgment, with the result that the administration of the law will be nullified in the northern district of Ohio, unless his action can be controlled by this tribunal. Similar conditions may possibly arise in other districts.

The proposition, then, amounts to this: Shall the practical construction of the act of 1888, as to appeals from United States commissioners, inaugurated and judicially sanctioned from the passage of the act, and recognized by this court, and which is to the interest of all concerned, now, sixteen years later, be overthrown, in favor simply of a more literal reading of the statute?

HENRY M. HOYT.
Solicitor-General.
J. C. MCREYNOLDS,
Assistant Attorney-General.

WASHINGTON, *April, 1904.*

APPENDIX.

THE UNITED STATES OF AMERICA,

Northern district of Ohio, eastern division, ss:

Before Francis J. Wing, United States district judge.

THE UNITED STATES OF AMERICA, plaintiff, *v.* JOCK COE, DEFENDANT.	Petition for writ of error.

Now comes the United States of America, plaintiff herein, and says that on or about the 27th day of November, 1903, Francis J. Wing, United States district judge, entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had thereunto in this cause certain errors were committed, to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in its behalf to the Supreme Court of the United States, for the correction of errors so complained of, and that a transcript of the records, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

JOHN J. SULLIVAN,
United States Attorney, Northern District of Ohio.

[Indorsed.]

Before Francis J. Wing, United States district judge, northern district of Ohio. The United States of America, plaintiff, *v.* Jock Coe, defendant. Petition for writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the district court of the United States for the northern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is before you, between the United States of America, plaintiff in error, and Jock Coe, defendant in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by its complaint appears, and it being duly fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the —— day of ———, 1904, in said Supreme Court of the United States, to be there and then held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to law and custom of the United States should be done.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3d day of February, 1904.

FRANCIS J. WING,
Judge of the District Court of the United States for the Northern District of Ohio.

The above writ of error is hereby allowed.

FRANCIS J. WING,
Judge of the United States District Court.

[Indorsed.]

Before Francis J. Wing, United States district judge, northern district of Ohio. The United States of America, plaintiff in error, *v.* Jock Coe, defendant in error. Writ of error.

In the United States circuit court of appeals for the ninth circuit.

TSOI YII
v.
THE UNITED STATES OF AMERICA.

YEE YUEN
v.
THE UNITED STATES OF AMERICA.

CHEUNG HIM NIM
v.
THE UNITED STATES OF AMERICA.

CHEW HING
v.
THE UNITED STATES OF AMERICA.

LEE YUE
v.
THE UNITED STATES OF AMERICA.

CHIN CHEW FONG
v.
THE UNITED STATES OF AMERICA.

C. T. Hughes, Frank V. Bell, and Henry C. Dibble & Dibble, for the appellants.

Duncan E. McKinlay for the appellee.

Before Gilbert and Ross, circuit judges, and Hawley, district judge.

The appellants in these cases, Chinese persons, were prosecuted before a United States commissioner under section 13, of the Chinese-exclusion act of September 13, 1888. The commissioner in each case adjudged

that they were unlawfully in the United States and that they be deported. Appeals from his judgments were taken to the judge of the district court for the northern district of California. Judgments were made and entered in that court affirming the judgments of the commissioner. From the judgments of the district court appeals were taken to this court. The appellee now moves to dismiss on the ground that no appeal lies from the decision of the district judge. Section 13 of the act of September 13, 1888, under which the appeals were taken provides as follows:

> That any Chinese person, or persons of Chinese descent, found unlawfully in the United States, or its Territories, may be arrested upon a warrant issued upon a complaint, under oath, filed by any person on behalf of the United States, by any justice, judge, or commissioner of a United States court, returnable before any justice, judge, or commissioner of a United States court, or before any United States court, and when convicted upon a hearing and found and adjudged to be not lawfully entitled to be and remain in the United States, such person shall be removed from the United States to the country whence he came. But any such Chinese person convicted before a commissioner of a United States court may, within ten days from such conviction, appeal to the judge of the district court for the district.

It is contended that all legislation relating to the Chinese is special, that the section above quoted gives the right of appeal only from the ruling of a commissioner to the judge of the district court, and that the decision of such district judge is not the judgment of the court and is not a final decision appealable to this court, such as is contemplated by section 6 of the act

of March 3, 1891, establishing the circuit court of appeals and providing that they shall exercise appellate jurisdiction to review by appeal, or writ of error, final decision in the district court. In the case of *United States* v. *Gee Lee* (50 Fed., 271) the phrase "the district judge of the district" as used in section 13 of the act of September 13, 1888, was construed and was held to be the equivalent of the words "district court of the district." Judge Deady, who delivered the opinion of the court in that case, said: "'Judge of the district court' and 'district court' are not, strictly speaking, convertible terms. But they are so in a popular sense, and it is safe to assume that Congress, in the use of the former phrase, in this connection, intended to give the party an appeal to the district court of the district." In *Chow Loy* v. *The United States* (112 Fed., 354) the circuit court of appeals for the first circuit criticised the decision in the Gee Lee case, and held that the appeal to the judge of the district court for the district is to the judge as a special tribunal and not to the district court. In support of this view the court referred to the decision in *Fong Yue Ting* v. *The United States* (149 U. S., 698, 728), where it was said: "The designation of the judge in general terms as a United States judge is an apt and sufficient description of a judge of a court of the United States, and is equivalent to or synonymous with the designation, in other statutes, of the judges authorized to issue writs of habeas corpus or warrants to arrest persons accused of crime, Rev. St., 752, 1014," and the circuit court of appeals, arguendo, referred to *Carper* v. *Fitzgerald* (121 U. S., 87), where it was held that no appeal lies in the Supreme Court from the order of a circuit judge made in chambers as a judge and not as a court, discharging a person brought before him on a writ of

habeas corpus. But in the case of Fong Yue Ting, the remarks of the court above quoted were not directed to the provision of the act providing for an appeal to the district judge from a commissioner's decision. They had reference to the language of section 6 of the act of May 5, 1898, and the portion thereof which provides that a Chinese laborer who shall neglect or fail to apply for a certificate of residence within the year therein prescribed "may be arrested by any customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge," and that it shall thereupon be the duty of a judge to order that the laborer be deported from the United States.

We think the whole question of our right to entertain these appeals is determined by the decisions of the Supreme Court in *United States* v. *Mrs. Gue Lim* (176 U. S., 459), *Chin Bak Kan* v. *United States* (186 U. S., 193), and *Ah How* v. *United States*, and the other cases therewith decided on February 23, 1904, not yet reported. In the first of those cases certain Chinese had by the United States commissioner been adjudged to be unlawfully within the United States. They appealed and the district court held that they were lawfully entitled to be and remain in the United States. An appeal was taken to the Supreme Court, and that court affirmed the judgment of the district court. In the Chin Bak Kan case the appellant was arrested under the provisions of section 12 of the act of September 13, 1888, and was by a commissioner adjudged to be unlawfully in the United States and ordered to be deported. An appeal was taken from the judgment of deportation rendered by the commissioner to the judge of the district court of the United States for the northern district of New

York. That court affirmed the judgment. From that judgment an appeal was taken to the Supreme Court under section 5 of the act of March 3, 1891, on the ground that the construction of the treaty of 1894 was drawn into question. The Supreme Court entertained the appeal and its opinion affirming the judgment appealed from, quoted the provisions of section 13 of the act of September 13, 1888, under which the arrest was made. The case of Ah How was a similar one. Mr. Justice Holmes, in delivering the opinion of the court, said: "These are appeals of a commissioner, and adjudging that the appellants be removed from the United States to China," and the court affirmed the judgments of the district court.

If appeals could be taken in those cases to the Supreme Court, they could be entertained only on the ground that the decision of the district judge on an appeal from the commissioner's decision was the judgment of the district court, and as such a final decision from which an appeal could be taken. It is true that in neither of those decisions was discussion had of that precise question, but it is not supposed that the Supreme Court did not consider all the terms of the act authorizing the judgment from which the appeal was prosecuted, and did not have in mind and pass upon the question of its own jurisdiction. On the authority of those decisions the motions to dismiss will be overruled.

[Indorsed.]

Opinion overruling motions to dismiss. Filed April 4, 1904. F. D. Monckton, clerk.

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FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 16, Original.

EX PARTE: IN THE MATTER OF THE UNITED STATES, PETITIONER.

ANSWER OF FRANCIS J. WING, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED APRIL 2, 1904.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 16, Original.

EX PARTE: IN THE MATTER OF THE UNITED STATES, PETITIONER.

ANSWER OF FRANCIS J. WING, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

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1 In the Supreme Court of the United States.

October Term, 1903.

No. 16. Original.

EX PARTE THE UNITED STATES, PETITIONER.

ANSWER OF FRANCIS J. WING, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

Now comes Francis J. Wing, and, in obedience to the rule to show cause entered herein, respectfully represents as follows:

1. That he is now, and was at the times stated in the petition for mandamus filed herein, judge of the district court of the United States for the northern district of Ohio.

2. That, in the case of the United States versus Jock Coe, proceedings occurred as set down and described in the bill of exceptions therein, a copy of which is attached to the petition for mandamus herein as an exhibit, and not otherwise.

That a petition for an order was presented to your respondent by the United States attorney in said cause, as of March 2, 1904, praying that your respondent, as judge, should direct the clerk of the district court for the northern district of Ohio "to file all the papers in this proceeding and make all necessary entries in regard thereto, in order that an

appeal may be taken therein to the Supreme Court of the United
2 States, and further directing said clerk to make up and certify, as clerk, a complete transcript of the record in this proceeding," a copy of which petition is attached to the petition herein as an exhibit. The said petition was denied by your respondent, as judge, to which ruling exception was taken by the United States.

Upon the application of the United States attorney, your respondent allowed an appeal of said cause to the Supreme Court of the United States, and signed such allowance and delivered the same to the United States attorney.

The causes which moved your respondent to the course adopted were the judicial interpretation of your respondent of the language in section 13 of the act of September 13, 1888, which provides for an appeal "to the judge of the district court for the district," to the effect that such language gave jurisdiction in appeal to your respondent, as judge, and did not give jurisdiction to the United States district court of this district to hear such appeal, and that such appeal was heard, not in the district court, but before your respondent, as judge thereof; and the decision in Carper v. Fitzgerald, 121 U. S., 87, to the effect that neither the form of the docket entry nor the recording of the proceedings in the records of the court could change the character of the proceedings.

Your respondent further held, in his discretion as judge, that the clerk of the United States district court for the district should not be ordered to make the proceedings in said cause of The United States v. Jock
3 Coe a matter of record in the United States district court, because there is no provision of law which requires such clerk to record other proceedings than those which occur in the United States district court.

3. As to the second paragraph of the petition herein, it is true, as stated therein, that a person was arrested, upon a warrant issued by John H. Simpson, United States commissioner, under the name of Bong Meng. As to whether or not he was a Chinese person, as alleged in the petition, your respondent has no knowledge; and, for want of knowledge, denies the allegation that Bong Meng was a Chinese person.

Proceedings with respect to the person called Bong Meng were had before your respondent, in all respects similar to those with respect to Jock Coe.

4. On January 16, 1904, a person was brought before your respondent, on appeal, under the name of Woo Joe. As to whether or not he was a Chinese person, as alleged in the petition, your respondent has no knowledge; and, for want of knowledge, denies the allegation that the person arrested was a Chinese person.

Proceedings with respect to the person called Woo Joe were had before me, in all respects similar to those described with respect to Jock Coe and Bong Meng.

FRANCIS J. WING,
Judge of the United States District Court
for the Northern District of Ohio.

THE STATE OF OHIO, *Cuyahoga County, ss:*

Personally appeared before me Francis J. Wing, judge of the district court of the United States for the northern district of Ohio, who,
4 being duly sworn, deposes and says that he has read the foregoing answer, and knows the contents thereof, and that the statements therein are true, to the best of his knowledge, information, and belief.

FRANCIS J. WING.

Sworn to before me the said Francis J. Wing, and by him subscribed in my presence, this thirty-first day of March, A. D. 1904.

[SEAL.]

CHAS. M. BUSS,
Notary Public, Cuyahoga County, Ohio.

(Indorsed:) United States Supreme Court. October term, 1903. No. 16. Original. Ex parte The United States, Petitioner. Answer of Francis J. Wing, judge of U. S. district court northern district of Ohio. Received office of the clerk Supreme Court U. S. Apr. 2, 1904.

(Indorsement on cover:) Supreme Court U. S., October term, 1903. Term No. 16, origl. Ex parte, in the matter of The United States vs. Petitioner. Answer of Francis J. Wing, judge of U. S. dist. court northern district of Ohio. Filed April 2d, 1904.

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FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 16, Original.

EX PARTE: IN THE MATTER OF THE UNITED STATES, PETITIONER.

ANSWER OF H. F. CARLETON, CLERK OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED APRIL 2, 1904.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 16, Original.

EX PARTE: IN THE MATTER OF THE UNITED STATES, PETITIONER.

ANSWER OF H. F. CARLETON, CLERK OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

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1 In the Supreme Court of the United States. October term, 1903.
No. 16, original.

EX PARTE THE UNITED STATES, PETITIONER.

ANSWER OF H. F. CARLETON, CLERK OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

Now comes H. F. Carleton, and in obedience to the rule to show cause entered herein respectfully represents as follows:

1. That he is nov, and was at the times stated in the petition for mandamus filed heren, clerk of the district court of the United States for the northern district of Ohio.

2. That in the cases of The United States versus Jock Coe. The United States versus Bong Meng, and The United States versus Woo Joe, he has omitted to make record of the doings and proceedings in said causes because of the decisin of the judge of the district court for the district to the effect that all of such proceedings were had before him as judge, and that such proceedings were not had in the United States district court; and because tiere is no authority of law for your respondent, as clerk of said court, to enter upon its records other matter than that which records the proceedings of the United States district court, without the order of the Cout.

H. F. CARLETON,
Clerk U. S. Dist. Court, N. D. O.

2 THE STATE OF OHIO,
Cuyahoga County, ss:

Personally appeared before me, H. F. Carleton, clerk of the district court of the United States for the northern district of Ohio, who, being duly sworn, deposes and says that he has read the foregoing answer, and knows the contents thereof, and that the statements therein are true, to the best of his knowledge, information, and belief.

H. F. CARLETON.

Sworn to before me by the said H. F. Carleton, and by him subscribed in my presence, this thirty-first day of March, A. D. 1904.

[SEAL.] CHAS. M. BUSS,
Notary Public, Cuyahoga County, Ohio.

3 (Indorsed:) United States Supreme Court. October term, 1903. No. 16, original. Ex parte The United States, petitioner. Answer of H. F. Carleton, clerk of U. S. district court, northern district of Ohio. Received office of the clerk Supreme Court U. S., Apr. 2, 1904.

4 (Indorsement on cover:) Supreme Court U. S. October term, 1903. Term No., 16, orig'l. Ex parte In the matter of the United States vs. Petitioner. Answer of H. F. Carleton, clerk U. S. district court northern dist. of Ohio. Filed April 2d, 1904.

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